BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.03.2019
CORAM:
THE HON'BLE Mr. JUSTICE K.KALYANASUNDARAM
AND
THE HON'BLE Mrs. JUSTICE R.THARANI
C.M.A.(MD)No.620 of 2018

1.Shanthi
2.Minor Sorna Lakshmi
3.C.Lakshmi
... Appellants

Vs.

1.Ashok P.Bhosale

2.The New India Assurance Company Ltd.,
Divisional Office - IX,
Savarkar Udyog Bhavan,
Shivaji Nagar,
Pune,
Maharastra State 411 005.

(Minor Rep through her mother 1st appellant) ... Respondents

PRAYER: The appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2017 made in M.C.O.P.No.978 of 2013 passed by the Motor Accident Claims Tribunal, (IV Additional District Judge), Tirunelveli.

For Appellants : Mr.T.Selvakumaran
For Respondents : Mr.I.Robert Chandrakumar for R2
No appearance for R1

JUDGMENT

(Judgment of the Court was delivered by K.KALYANASUNDARAM,J.)

Being dis-satisfied with the award of the Motor Accident Claims Tribunal, (IV Additional District Judge), Tirunelveli, dated 22.09.2017 passed in M.C.O.P.No.978 of 2013, the claimants have preferred this Civil Miscellaneous Appeal for enhancement of compensation.

2.The facts in brief are as follows: -
On 07.03.2013, the deceased Ganesh Kumar was riding his motor cycle in Pune Nagar Road, Pune. At that time, a Tractor came in a rash and negligent manner and dashed against the motor cycle and in that process, the deceased died on the spot. The legal heirs of the deceased filed claim petition seeking compensation of Rs.3 crores.

3.Though the 2nd respondent / Insurance Company denied and disputed the case of the claimants, the claims Tribunal, after analyzing both oral and documentary evidence, came to the conclusion that the driver of the Tractor was negligent and awarded compensation of Rs.73,50,288/- along with interest at 7.5% p.a.

4.Mr.T.Selvakumaran, learned counsel for the appellants would urge that as per the evidence of P.W.3, the deceased was having bright future in the company where he was wroking. However, the Tribunal without considering the evidence in a proper perspective failed to add future prospectus to the salary of the deceased and hence, the appellants are entitled for higher compensation.

5.Mr.I.Robert Chandrakumar, learned standing counsel for the 2nd respondent / Insurance Company made submissions in support of the finding of the Tribunal.

6.Heard the learned counsel on either side and perused the materials available on record.

7.The Hon'ble Apex Court in the latest judgment reported in ***2017(16) SCC 680 (National Insurance Co.Ltd., Vs. Pranay Sethi and others)*** has held as under:

> "59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one’s income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always acompeting attitude in the private sector to enhance the salary to get better efficiency from the

employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."

8.In the case on hand, it is not in dispute that the deceased was working in Sungard Solutions Software (India), Pune and he was drawing monthly salary of Rs.84,700/-. The claimants have produced the salary slip which had been marked as Ex.P.17 and Ex.P.25. The Tribunal after deduction has taken the income of the deceased at Rs.69,090/-. The evidence of P.W.3 would reveal that the deceased was working in the said company and his service was appreciated by the Company. The Human Resource Officer, Sungard Solutions Software (India), Pune has deposed before the Tribunal that the deceased was working as an Assistant Manager Network and the Company, every year, assessed the performance of the employee and awards rating according to their performance and such rate would reflect on the increment of salary.

9.As rightly contended by the learned counsel for the appellants that the Tribunal without properly appreciating the evidence of P.W.3 and the decision of the Hon'ble Supreme Court reported in ***2017(16) SCC 680*** (cited supra) has held that the deceased is not entitled for future prospectus.

10.In our considered opinion, the Tribunal has rightly fixed the income as Rs.69,090/-, however, 40% has to be added towards future prospectus. Hence, the income of the deceased is arrived at Rs.96,726/-. From which, 20% has to be deducted towards Income Tax. After deducting 20%, the income of the deceased comes to Rs.77,380/-. Further, one third has to be deducted towards personal and living expenses of the deceased. Therefore, the contribution to the family comes to Rs.51,586/-. The Tribunal has rightly applied 16 multiplier and the loss of income of the deceased would be Rs.99,04,512/-.

11.In addition, the claimants are entitled for Rs.70,000/- towards conventional damages. In total, the claimants are awarded compensation of Rs.99,74,512/- rounded as **Rs.99,75,000/- with 7.5%** interest per annum. The award amount is apportioned at the rate of 40:40:20 to the claimants.

12.It is represented that the 2nd respondent / Insurance Company has deposited the Tribunal award amount. Hence, the 2nd respondent / Insurance Company is directed to deposit the enhanced award amount, within a period of three weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimants namely, the appellants 1 and 3 are permitted to withdraw their respective share and the share in respect of the minor namely, the 2nd appellant shall be deposited in any one of the Nationalized Bank till the minor attains majority. The interest of such deposit shall be withdrawn by the mother of the minor claimant once in three months from the Bank.

13.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The Motor Accident Claims Tribunal, (IV Additional District Judge), Tirunelveli.

+1cc to Mr.G.PRABHU RAJADURAI, Advocate, SR.No.56743
+1cc to Mr.T.Selvakumaran, Advocate, SR.No. 56473

C.M.A.(MD)No.620 of 2018
25.03.2019

NBJ

KK/SAR/02.05.2019/ 4P- 4C